



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0074]

RIN 1625-AA09

Drawbridge Operation Regulation; Hood Canal, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is modifying the drawbridge operating regulation for the Hood Canal floating drawbridge near Port Gamble. This modification will relieve heavy rush hour road traffic on State Routes 3 and 104 by allowing the draw of the bridge to remain closed to maritime traffic during afternoon rush hours during summer months. This action will help alleviate heavy rush hour road traffic by reducing bridge openings, thereby reducing traffic queues and delays due to bridge openings.

**DATES:** This rule is effective May 22, 2012.

**ADDRESSES:** Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2012-0074 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0074 in the

"Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail the Bridge Administrator, Coast Guard Thirteenth District; telephone 206-220-7282 e-mail randall.d.overton@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 1, 2012 we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Hood Canal, WA in the Federal Register(77 FR 12514). We received 17 comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register because due to the volume of traffic and congestion in the area around the bridge any further delay would not be in the

best interest for public safety. The Coast Guard conducted a test deviation of the bridge operating schedule from May 27, 2011 through September 30, 2011 with comments received through November 30, 2011. The Coast Guard also published an NPRM, which referenced a May 22 start date. The comments received both from the test deviation and the NPRM were overwhelmingly in support of implementing this rule, with no comments opposing the modification.

#### Basis and Purpose

Senator Phil Rockefeller and Representative Christine Rolfes of the Washington State Legislature requested that the operating regulations of the Hood Canal Bridge be changed to provide some relief to road traffic on State Routes 3 and 104. Traffic queues south of the eastern end of the bridge can be in excess of 45 minutes during and after openings of the draw span. The stopped road traffic on this two-lane highway blocks access to intersecting streets along the queue. The current operating regulations for the bridge are found at 33 CFR 117.1045. Per existing operating regulations, the bridge shall open on signal if at least one hour notice is provided and the draw shall be opened horizontally for three hundred feet unless the maximum opening of 600 feet is requested. The current regulations remain in effect except for the establishment of the restricted period under this rule. Navigation on the

waterway consists of commercial tugs with tows, recreational vessels of various sizes, commercial fishing vessels, and U.S. naval vessels with escort vessels including those of the U.S. Coast Guard. This new rule will not affect commercial tug and tow vessels nor will it affect U.S. Naval Vessels or vessels in service to the U.S. Navy or other public vessels of the United States because pursuant to this rule, the bridge is required to open for these types of vessels during the restricted period. The Coast Guard conducted a test deviation of the bridge operating schedule from May 27, 2011 through September 30, 2011 during which the bridge was not required to open from 3 pm to 6 pm except for U.S. Navy Vessels and vessels attending the missions of the U.S. Navy. This test deviation was published in the Federal Register under docket number USCG-2010-0314 and comments were received and evaluated during the comment period which ended November 30, 2011.

Comments received, during the test deviation were evaluated and incorporated into a proposed rule which was published in the Federal Register on March 1, 2012 under docket number USCG-2012-0074.

#### Discussion of Comments and Changes

The Coast Guard issued a Notice of Proposed Rule Making (NPRM) under docket number USCG-2012-0074 and received comments through April 16, 2012. 17 comments were received.

The comments received in response to the NPRM were overwhelmingly in favor of instituting this rule. Sixteen of the 17 comments supported the modification. Eight of 16 comments supporting the modification also proposed adding similar restrictions on bridge openings for morning commute hours. The Coast Guard reviewed the bridge opening logs and the vehicle traffic counts for the morning hours and found no definitive benefit of imposing a morning restriction on the drawbridge operation. One comment was received in opposition to the applicability of the rule. The opposing commenter stated that the restriction should be expanded to include naval and commercial vessels. The Coast Guard reviewed the bridge opening logs and found no significant benefit gained by expanding the restrictions to tug and tow vessels which are exempt from this rule. The Coast Guard will not expand the restrictions to vessels of the U.S. Navy or vessels attending the missions of the U. S. Navy because restricting movement of U.S. Navy vessels could compromise national security. This final rule is being issued with no changes from the proposed rule issued under docket USCG-2012-0074.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or

executive orders.

#### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. We have reached this conclusion by the fact that commercial tow vessels and U.S. Naval Vessels are exempt from the restricted openings. Vessels that would be primarily affected are recreational vessels that are not able to pass through the fixed navigational channels of the bridge. Vessels affected by the restricted opening schedule will be able to plan their trips to avoid the restricted period. There are no changes to the regulatory text of this rule from the previously issued NPRM.

#### Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would primarily affect recreational sailboats which have mast heights that preclude them from passing under the fixed navigational openings in the bridge. Vessels which require an opening will be informed of the restricted closure period via the Coast Guard's Local Notice to Mariners which will allow them to plan trips to avoid this time frame.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or



risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a

categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.1045 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and adding new paragraph (b) to read as follows:

§ 117.1045 Hood Canal.

\* \* \* \* \*

(b) The draw of the Hood Canal Bridge, mile 5.0, need not open for vessel traffic from 3 p.m. to 6:15 p.m. daily from 3 p.m. May 22 to 6:16 p.m. September 30, except for commercial tug and tow vessels and vessels of the U.S. Navy or vessels attending the missions of the U.S. Navy and other public vessels of the United States. At all other times the bridge will operate in accordance with paragraph (a) of this section.

\* \* \* \* \*

Dated: May 3, 2012 A. T. EWALT

Captain, U. S. Coast Guard  
Commander, Thirteenth Coast Guard District  
Acting

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